

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NUMBER: 04-11937DPW

\* \* \* \* \*  
ROBERT L. JOHNSON,  
Plaintiff,  
v.  
TOWN OF SANDWICH, MARYGAIL ALESSE,  
PATRICK R. ELLIS, ROBERT S. JONES,  
DIANE T. TUCKER, JOHN S. JILLSON,  
JAN L. TEEHAN, and GEORGE H. DUNHAM,  
Defendants  
\* \* \* \* \*

**PLAINTIFF'S OPPOSITION**  
**TO DEFENDANTS'**  
**MOTION TO DISMISS**

NOW comes the Plaintiff, Robert L. Johnson, and hereby sets forth his opposition to the Defendants' Motion to Dismiss, and states as grounds the following:

1. The Defendants assert as grounds for their Motion to Dismiss that the Plaintiff failed to file his Complaint within the three (3) year statute of limitations as set forth by Massachusetts General Laws, Chapter 151B, § 9.
2. The Plaintiff states that he was discriminated against by the Defendants on the basis of his age and disabled veteran status when he was not appointed to the position of Chief of Police of the Town of Sandwich Police Department; and a younger, less qualified candidate, Michael J. Miller, was appointed by the Defendants to be Chief.
3. The Plaintiff filed his appeal with the Massachusetts Civil Service.
4. The Plaintiff filed his Complaint with the Massachusetts

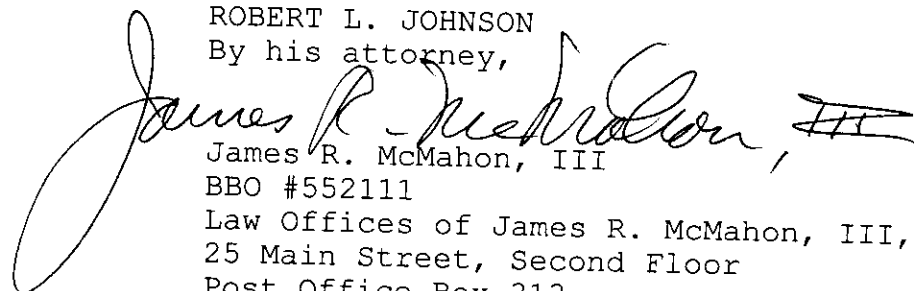
Commission Against Discrimination (MCAD) in 2000; and said filing was also a simultaneous filing with the United States Equal Employment Opportunity Commission (EEOC).

5. The MCAD denied part of the Plaintiff's claim of discrimination, and failed to act on another part; the Plaintiff subsequently requested the EEOC to take action as to its filing.
6. The EEOC dismissed the Plaintiff's Complaint on June 7, 2004; and issued a Dismissal and Notice of Rights, informing the Plaintiff of his right to file a lawsuit under Federal Law, (Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act), within ninety (90) days of his receipt of the Notice. (See Dismissal and Notice of Rights annexed to the Plaintiff's affidavit and marked as Exhibit "A".)
7. That Notice further advises the Plaintiff that the time limit for filing suit based on a state claim may be different from federal claims, (i.e. shorter or more limited). (See Exhibit "A".)
8. The Plaintiff filed suit in the United States District Court, for the District of Massachusetts, on September 3, 2004, a date within the ninety (90) days required for filing his federal claim pursuant to said Notice. (See copies of the filing letter and Civil Action Cover Sheet, date stamped September 3, 2004, annexed to the Plaintiff's affidavit and marked as Exhibit "B".)

9. The three (3) year statute of limitations, under Massachusetts General Laws, Chapter 151B, § 9, and cited by the Defendants as the grounds for their Motion to Dismiss, is applicable to complaints brought under state law and commenced in the superior or probate court for the county in which it is alleged that unlawful practices have occurred; however, it does not govern actions filed pursuant to Federal Law in the United States District Court.
10. The Plaintiff's Complaint has been filed pursuant to Federal Law within the ninety (90) days of receipt of the Notice from the EEOC; and consequently, the Plaintiff's Complaint is not subject to the three (3) year statute of limitation of Massachusetts General Law Chapter 151B, § 9.
11. As the Plaintiff's Complaint was duly filed within the ninety (90) days of receipt of the EEOC Notice, the Defendants' Motion to Dismiss is groundless, and must be denied as a matter of law.

WHEREFORE, the Plaintiff respectfully request that this Honorable Court deny the Defendants' Motion to Dismiss.

ROBERT L. JOHNSON  
By his attorney,



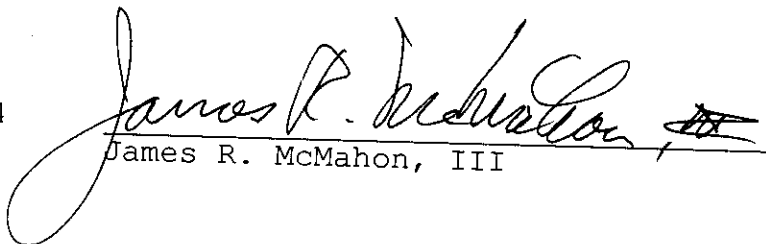
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Dated: November 29, 2004

CERTIFICATE OF SERVICE

I, James R. McMahon, III, Esquire, attorney for the Plaintiff, Robert L. Johnson, do hereby certify this day that I have served a true copy of the within Plaintiff's Opposition to Defendants' Motion to Dismiss, along with Plaintiff's Affidavit with Exhibits, upon all the Defendants, the Town of Sandwich, et al, by mailing same, first-class, postage prepaid, to their attorneys of record, Leonard H. Keston, Esquire and Deborah I. Ecker, Esquire, of Brody, Hardoon, Perkins & Kesten, LLP at One Exeter Plaza, 12th Floor, Boston, MA 02116.

Dated: November 29, 2004

  
James R. McMahon, III